

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**THE OHIO STATE UNIVERSITY,**

**Plaintiff,**

**v.**

**Civil Action 2:17-cv-1092  
Chief Judge Algenon L. Marbley  
Magistrate Judge Chelsey M. Vascura**

**REDBUBBLE, INC.,**

**Defendant.**

**SCHEDULING ORDER**

The Court conducted a telephonic status conference on May 12, 2021. All parties were represented by counsel.

**Rule 26(a)(1) Initial Disclosures**

The parties have agreed to make amended initial disclosures by **June 15, 2021**.

**Jurisdiction and Venue**

There are no contested issues related to venue or jurisdiction.

**Amendments to Pleadings and/or Joinder of Parties**

Plaintiff indicated that it may be filing a motion to amend, seeking to amend the Complaint to add a different theory of liability. Because the deadline for filing motions or stipulations addressing the parties or pleadings expired May 9, 2018, Plaintiff would need to satisfy the standards set forth in both Federal Rule of Civil Procedure 15(a) and Rule 16(b)(4).

**Motions**

There are no pending motions.

### **Allegations in the Pleadings and Jury Demand**

Plaintiff brings this action against Redbubble, LLC, for alleged violations of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), and violations of the rights of publicity under Ohio Revised Code §§ 2742, *et seq.* Plaintiff's claims arise from Redbubble's alleged failure to prevent the misuse of the University's trademarks and the persona of Urban Meyer on t-shirts and other merchandise sold by Redbubble. Redbubble denies liability.

There is no jury demand.

### **Expert Disclosures**<sup>1</sup>

Primary expert reports, if any, must be produced by **October 15, 2021**. Rebuttal expert reports, if any, must be produced by **November 30, 2021**.

If an expert is retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, the witness identification must consist of a report that conforms to Rule 26(a)(2), unless otherwise stipulated or ordered by the Court.

### **Discovery Deadline and Limitations**

The parties may, without further leave of Court, agree to exceed the limitations on discovery established by the Federal Rules of Civil Procedure or the Local Rules of this Court. If the parties are unable to reach an agreement on any matter related to discovery, prior to filing a motion, they are directed to arrange an informal conference with the Court.

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<sup>1</sup> Rebuttal/Responsive experts are strictly limited to rebutting unanticipated opinions expressed by a primary expert. When the plaintiff intends to offer no expert testimony supporting his or her claims, but the defendant chooses to offer expert testimony on them that would ordinarily constitute rebuttal/responsive testimony, the defendant's experts must make such disclosures by the first deadline.

All discovery shall be completed by **January 15, 2022**. For purposes of complying with this Order, the parties must schedule their discovery in such a way as to require all responses to be served prior to the deadline and must also file any motions relating to discovery within the discovery period.

The parties anticipate the production of ESI. The parties agree that ESI will be produced in unique bates stamped PDF or TIFF format that is easily readable by both parties

The parties intend to seek entry of a protective order or clawback agreement.

### **Dispositive Motions**

Case dispositive motions must be filed by **February 15, 2022**.

### **Settlement**

Plaintiff shall make an updated settlement demand by **May 21, 2021**. Defendant shall respond by **June 4, 2021**. The parties agree to make a good faith effort to settle this case. The parties understand that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference in **July 2021**. In order for the conference to be meaningful, the parties agree to complete all discovery that may affect their ability to evaluate this case prior to the settlement conference. The parties understand that they will be expected to comply fully with the settlement order which requires *inter alia* that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

Referral to court-facilitated mediation has no effect on the case schedule. All deadlines established in this Order will remain in place unless the parties move for and are granted a continuance or stay. In the event the parties schedule a private mediation, they may notify the Court and request to be excused from participation in court-facilitated mediation.

**Other Matters**

Any party intending to seek attorney fees and costs as a prevailing party shall make quarterly reports to the other party disclosing the to-date accrued attorney's fees and costs.

If any date set in this Order falls on a Saturday, Sunday, or legal holiday, the date of the next business day will control.

**IT IS SO ORDERED.**

/s/ Chelsey M. Vascura  
CHELSEY M. VASCURA  
UNITED STATES MAGISTRATE JUDGE